

Before the  
Federal Communications Commission  
Washington, D.C. 20554

**RECEIVED**

OCT 27 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Carriage of the Transmissions )  
of Digital Television Broadcast Stations )  
 )  
Amendments to Part 76 of the Commission's Rules )  
 )  
TO: The Commission )

CS Docket No. 98-120

**REQUEST FOR FCC ENFORCEMENT OF EXISTING DEADLINES  
AND EXPEDITED ACTION**

It is critical to the success of the DTV transition that the issues raised in the above-referenced proceeding be resolved as expeditiously as possible. The proceeding is already behind schedule and the Commission should not countenance further delay by extending the deadline for filing reply comments. The Association for Maximum Service Television, Inc. (MSTV) feels so strongly about the need for prompt action in this proceeding that we hereby formally (and preemptively) request the Commission to refrain from granting any further extensions of time for filing comments in the above-referenced proceeding. Instead, the Commission should review the comments and replies filed within the prescribed deadlines and issue a Report and Order resolving the important issues involved in the proceeding as soon as possible.

Section 614(b)(4)(B) of the Communications Act requires the Commission to initiate a proceeding to establish necessary changes in cable carriage requirements to ensure the carriage of "advanced" television broadcast signals "[a]t such time as the Commission prescribes

No. of Copies rec'd  
List A B C D E

049

modifications of the standards for television broadcast signals.”<sup>1</sup> Although the Commission adopted the DTV transmission standard in December 1996, it did not initiate this proceeding until July of this year, nearly 20 months later. And the Commission has already granted one extension of time for filing comments in this proceeding, so that reply comments that should have been due at the end of this week are now nearly another month away.<sup>2</sup>

In the face of these delays, several of the recently-filed comments emphasized that time is of the essence as the Commission considers the adoption of rules regulating the carriage of digital broadcast systems on cable.<sup>3</sup> Congress has set a very short time frame for completion of the DTV transition and the return of analog spectrum. Broadcasters are expected to put forty or so DTV signals on the air in the next several months, far in advance of the FCC-mandated deadlines in order to further Congressional goals. They are doing this with the Commission’s encouragement, taking on the additional expenses of broadcasting a second signal earlier than required in an effort to get the DTV transition going as quickly as possible. And yet, they have no assurance of cable carriage and there is an astonishing lack of clarity in the entire DTV regulatory environment. By May 1, 1999, another group of stations is scheduled to go on the air and digital sets will stock the nation’s showroom floors.

---

<sup>1</sup> 47 U.S.C. § 534(b)(4)(B) (1994).

<sup>2</sup> Order, *In re Carriage of the Transmissions of Digital Television Broadcast Stations*, Amendments to Part 76 of the Commission’s Rules, CS Docket No. 98-120 (Aug. 27, 1998). The Commission granted the request for an extension of time only in part, recognizing that its “goal of having an expeditious filing period” in “this important proceeding” would be undermined by too lengthy an extension. *Id.* ¶ 3.

<sup>3</sup> *See, e.g.*, Comments of The Association of America’s Public Television Stations et al., CS Docket No. 98-120 (Oct. 13, 1998); Comments of the Association for Maximum Service Television, Inc., CS Docket No. 98-120 (Oct. 13, 1998); Comments of the Broadcast Group, CS Docket No. 98-120 (Oct. 13, 1998); Comments of Morgan Murphy Stations and Cosmos Broadcasting Corp., CS Docket No. 98-120 (Oct. 13, 1998); Comments of The Pikes Peak Broadcasting Co. et al., CS Docket No. 98-120 (Oct. 13, 1998).

Why is it so important that the Commission act quickly in this proceeding?

First, a large part of the proceeding deals with digital compatibility issues that are becoming increasingly problematic and will already inconvenience consumers that buy digital receivers over the next year. The Commission simply cannot wait any longer to state what it expects in terms of digital compatibility among digital broadcasts, digital cablecasts, and digital consumer devices. If there is no decision on these issues by February, it is unlikely that the next generation of digital devices will function optimally and that cable consumers will have access to the full range of features provided by digital broadcasters and equipment manufacturers. As a result, consumers may be unnecessarily disappointed with early digital services, stations could lose millions of dollars transmitting digital signals that few consumers receive (and that advertisers accordingly have little interest in supporting), and incentives for cable to carry DTV signals could decrease as demand for digital receivers stagnates.

Second, broadcasters and programmers may begin to question both the ultimate success of DTV and their commitment to it if the Commission itself shows no sense of urgency in completing the regulatory process. A number of comments filed thus far in this proceeding talk about how broadcasters have been given “free” spectrum to implement DTV as if DTV promised a windfall financial benefit to broadcasters.<sup>4</sup> In fact, broadcasters implementing DTV are incurring substantial expenses (both capital and transaction costs) for no additional revenue. They, and their programming partners, should at least have some certainty as to how the Commission intends to regulate the DTV service and how the existing rules will be adapted for the digital environment. Without this certainty, it will be difficult for broadcasters to negotiate

---

<sup>4</sup> See, e.g., Comments of Adelphia Communications Corp. et al., CS Docket No. 98-120 (Oct. 13, 1998); Comments of Ameritech New Media, CS Docket No. 98-120 (Oct. 13, 1998).

either retransmission consent agreements or network affiliation and syndication agreements. The need to conduct such negotiations right now is pressing.

Third, it is inconceivable that DTV signal penetration will reach a level consistent with the Congressional DTV transition deadline of 2006 if the 70% of consumers that receive television through cable are left wondering about the relationship between their cable service and their local DTV signals. Moreover, the success of the DTV transition will depend to a great extent on early consumer reaction. A positive response will be critical to generating the demand that creates economies of scale and brings down the price of DTV receivers. But a positive early consumer response is unlikely if cable carriage and compatibility issues remain unresolved and consumers and digital television retailers remain unsure of how digital signals will be delivered to consumers.

Fourth, as many commenters point out, cable systems are upgrading their facilities and introducing digital services daily. These upgrades and service plans involve choices about how to allocate capacity, what types of technologies to use, what compatibility solutions to support, and what sorts of service tiers to offer. Cable carriage of DTV signals, whether pursuant to retransmission consent or must carry, can be made easier or more difficult by the choices that are made tomorrow. Further delay in this rulemaking will only serve to increase the chances that these choices will not be consumer-friendly in terms of easing access to DTV signals.

At this point, the Commission simply cannot sit back and hope that the outstanding issues will resolve themselves. If cable operators, broadcasters, programmers, and equipment manufacturers know promptly what, when and how DTV signals will be carried on cable, it will be much easier for all parties to satisfy the Commission's requirements. In turn,

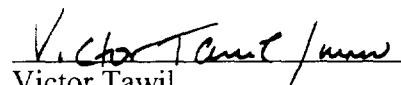
consumers will be reassured that they can make the move to digital television without too much disruption, and the nation will be on track for a relatively smooth transition to digital television. Accordingly, Jim Keelor, MSTV's chairman, likewise urges swift Commission action in this proceeding in his remarks today at the 12th Annual MSTV DTV Update. A copy of those remarks is attached.


\* \* \* \* \*

For the foregoing reasons, MSTV requests that the Commission not grant any requests that may be filed to extend the time for filing reply comments in the above-referenced proceeding, and proceed to review the comments filed and issue a Report and Order resolving the issues as soon thereafter as possible. In determining how soon is "possible," the Commission should consider what harm has already been done to consumer confidence in DTV and digital equipment by inertia. It should then set an aggressive schedule for concluding this proceeding.

Respectfully submitted,

**THE ASSOCIATION FOR MAXIMUM  
SERVICE TELEVISION, INC.**

  
Victor Tawil  
Senior Vice President  
MSTV  
1776 Massachusetts Avenue NW  
Washington D.C. 20036  
202-861-0344 (p)  
202-861-0342 (f)

  
Jonathan D. Blake  
Ellen P. Goodman  
Mary Newcomer Williams  
COVINGTON & BURLING  
1201 Pennsylvania Avenue NW  
Washington D.C. 20007  
202-662-6000 (p)  
202-662-6291 (f)

*Its Attorneys*

October 27, 1998



**Remarks by Jim Keelor  
Chairman, Association for Maximum Service Television  
12<sup>th</sup> Annual MSTV DTV UPDATE  
Washington, DC  
October 27, 1998**

1776 Massachusetts Ave., NW  
Suite 310  
Washington, DC 20036  
  
Tel (202) 861-0344  
FAX (202) 861-0342

**It has taken 12 years of a stressful but ultimately magnificent government/industry partnership in which MSTV has played a major role to place us on the threshold of transitioning America's television service to digital.**

**Broadcasters are moving forward with creativity and vigor. The major-market volunteers will meet the November 1 on-air target where humanly possible. Smaller markets also have stepped forward, far ahead of schedule. Where once there were 24 early-builder volunteers, there now are more than 40.**

**Broadcasters are doing their part. There are those who are eager to blame broadcasters for a lack of commitment to digital, pointing to small technical glitches or zoning problems as we go on the air with this revolutionary and untried new service. But don't confuse these exceptions for the rule — the rule of an aggressive broadcaster DTV roll-out.**

**By contrast, the reality is that cable is blocking DTV's way into American homes. And if clear and fair cable carriage and compatibility rules are not adopted soon, cable — which controls access to 70% of American homes — can slow, impair or cripple the digital transition.**

**The FCC only recently awakened to this threat, having relied on three false assumptions in dealing with cable issues. MSTV challenges the FCC to correct these assumptions and move forward quickly to ensure that communities can receive their local DTV signals easily and with full force.**

**First, the FCC assumed it could take a hands-off role with respect to cable compatibility issues. The result was an embarrassing Congressional inquiry that highlighted the fact that cable systems cannot accommodate this year's DTV sets and, unless curative steps are quickly taken, won't be able to accommodate even next year's sets.**

Second, the FCC did not appreciate that, for any kind of market to function, there have to be ground rules. It simply must resolve, for the digital world, such issues as network nonduplication, syndicated exclusivity, nondegradation, and channel positioning that have long been regulated in the analog world. It is unconscionable that when the Madison, Wisconsin station (one of the early build-out stations) carries in digital syndicated programming, for which it has negotiated exclusivity rights in its own markets, its home-town cable system could import and duplicate the same programming from another station in Chicago. That's not possible in the analog market. And it shouldn't be possible in digital. The FCC's new rulemaking identifies 8 to 10 of these non-must-carry carriage issues. The FCC should resolve them quickly.

Third, the FCC waited 19 months just to start the Congressionally-required rulemaking on these carriage issues and the must-carry issue. Apparently, it assumed these issues would be resolved by rumored, but nonexistent, all-industry negotiations or it simply feared to confront the stalemate on the must-carry issue. As a result of the delay, compatibility issues have worsened as cable has continued to build, hoping to escape whatever obligations eventually are adopted.

When one reads the 85-some comments filed in the cable carriage proceeding two weeks ago, one can better understand why the FCC has been paralyzed. A skimming of the record suggests that broadcasters demand must-carry rules for DTV instantly and across-the-board while cable contends that any carriage requirement would violate the U.S. Constitution. Cable over-reaches so much, that in reply comments I wouldn't be surprised if it argued that digital must-carry would offend the right to bear arms and is fattening. Given the perception of unyielding polarity of these positions, small wonder the FCC opted for inertia.

But, in fact, the broadcasters' comments suggest reasonable ways for the FCC to implement the DTV must-carry requirement that Congress mandated in 1992. They offer the FCC a blueprint to resolve the must-carry issue fairly and promptly. As important, broadcasters have offered to cooperate with the FCC to define workable must-carry rules.

MSTV was one of those that submitted ideas for a reasonable must-carry requirement. Those ideas took seriously cable's chief complaint. What was that complaint? The cable industry said it would fight to the death any rule that would require it to drop existing cable programming in order to carry digital broadcaster signals — with C-Span its favorite poster-child. Cable relies on this complaint despite the fact that it is adding channel capacity at a rapid rate, plans to carry its own digital programming services and interactive services, and would still be protected by the one-third cap and small system exceptions that apply in the analog world.

**Nonetheless, appreciating cable's main point, MSTV has offered a proposal that as a general matter would not require cable systems to drop existing cable programming while still curbing the worst anti-competitive abuses made possible by cable's bottleneck power. Jon Blake will provide a few more specifics on this proposal in his soon-to-follow panel.**

**Let me make two points in closing.**

**The first, as Margita said earlier, is that what is at stake here is localism — the service provided by local television stations to their surrounding coverage areas. This is the bedrock concept built into the original Communications Act that cable monopolists can destroy. Since the fledgling digital broadcast service is particularly vulnerable to cable's ability and incentive to thwart transition of the public's local service to digital, carriage rules are even more needed in the digital environment than in the analog.**

**The second point is urgency. Make no mistake, these cable issues can slow DTV's implementation. And, in turn, this delay could cripple the public's opportunity to reap digital's benefits. Delay, in other words, can lead to more than postponement. It can and will lead to injury, perhaps fatal injury, to the public's television service.**

**Because time is of the essence, MSTV today will be filing a request that the FCC permit no further delay of the cable carriage proceeding. Our message is simple: Past Commissions have helped the digital transition over hurdle after hurdle. It's time for this Commission to face the final one. Complete the process promptly, fairly, and decisively.**